

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                                 |
|--------------------|---|---------------------------------|
| MICHAEL D. GLENN,  | § |                                 |
|                    | § |                                 |
| Defendant Below-   | § | No. 343, 2004                   |
| Appellant,         | § |                                 |
|                    | § |                                 |
| v.                 | § | Court Below---Superior Court    |
|                    | § | of the State of Delaware,       |
|                    | § | in and for New Castle County    |
| STATE OF DELAWARE, | § | Cr. A. Nos. IN01-09-0886; 0890; |
|                    | § | IN01-05-2093                    |
| Plaintiff Below-   | § |                                 |
| Appellee.          | § |                                 |

Submitted: January 7, 2005

Decided: February 15, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 15th day of February 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael D. Glenn, filed an appeal from the Superior Court's July 27, 2004 order denying his sixth motion for sentence modification pursuant to Superior Court Criminal Rule 35. We find no merit to the appeal. Accordingly, we affirm.

(2) Glenn was charged in four separate indictments with numerous counts of forgery, theft, identity theft and issuing bad checks. In April 2002, he pleaded guilty to two counts of Forgery in the Second Degree and one count of Identity Theft. In exchange for his agreement to plead guilty to these offenses and to be

sentenced as an habitual offender,<sup>1</sup> the State agreed to dismiss 41 additional charges. Glenn was sentenced to a total of 9 years incarceration at Level V, to be suspended after 5 years for decreasing levels of probation. This Court affirmed Glenn's convictions and sentences on direct appeal.<sup>2</sup> Thereafter, Glenn filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and a total of five motions for sentence modification prior to the one at issue here.

(3) In this appeal, Glenn claims that the Superior Court erred in imposing a minimum mandatory sentence because Identity Theft, representing his fourth conviction for purposes of the habitual offender statute, was a non-violent felony.

(4) Glenn's claim previously was raised and rejected by this Court in his direct appeal. There, we ruled that, pursuant to the habitual offender statute, the Superior Court has discretion to impose up to a life sentence for a fourth felony conviction.<sup>3</sup> Moreover, although the statute requires the Superior Court to impose a minimum mandatory sentence if the defendant's fourth felony conviction is for a violent felony, it does not prohibit the Superior Court from imposing a minimum mandatory sentence if the fourth felony is a non-violent felony, as in Glenn's case.<sup>4</sup>

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<sup>1</sup> Del. Code Ann. tit. 11, § 4214(a) (2001).

<sup>2</sup> *Glenn v. State*, Del. Supr., No. 276, 2002, Steele, J. (Jan. 16, 2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

(5) Glenn may not re-litigate a claim in a Rule 35 proceeding that previously was raised and decided by this Court in his direct appeal.<sup>5</sup> This Court's ruling on Glenn's claim in his direct appeal constitutes the "law of the case" as to all subsequent stages of the criminal proceeding unless it is shown to be clearly erroneous or there has been a significant change in circumstance warranting otherwise.<sup>6</sup> No such exception has been demonstrated here.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>5</sup> *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

<sup>6</sup> *Id.*